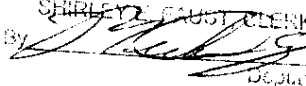


1 WILLIAMS LAW FIRM, P.C.
2 Mark S. Williams, Esq.
3 Susan Moriarity Miltko, Esq.
4 235 E. Pine, P.O. Box 9440
5 Missoula, MT 59807-9440
6 (406) 721-4350 Fax: (406) 721-6037
7 mark@wmslaw.com
8 susan@wmslaw.com
9 Attorneys for Defendants

FILED OCT 20 2013

SHIRLEY L. FAUST, CLERK
By 
Deputy

10 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

11 KRISTINA M. KEYS and JOHN JEWELL,

12 Plaintiffs,

13 -VS-

14 WESTERN MONTANA MENTAL HEALTH
15 CENTER, COMMUNITY COUNSELING &
16 CORRECTIONAL SERVICES, INC., JOHN
17 SMITHS 1-5 AND 6-10, AND ENTITIES A,
18 B AND C,

19 Defendants.

Hon. Ed McLean, Dept. 1
CAUSE NO. DV 4-370

2014-370

21 DEFENDANT WESTERN MONTANA
22 MENTAL HEALTH CENTER'S ANSWER TO
23 AMENDED COMPLAINT,
24 AND DEMAND FOR JURY TRIAL

25 Defendant Western Montana Mental Health Center (hereinafter, "WMMHC") answers
Plaintiffs' Complaint/Amended Complaint as follows:

1. WMMHC admits Paragraph 1 as to the residence of Kristina Keys. WMMHC
admits that it provided health services and medical treatment to Plaintiff Kristina Keys in the
past. WMMHC denies that she was a patient with WMMHC at all relevant times. WMMHC is
without sufficient information to admit or deny the allegations regarding John Jewell and

1 therefore denies the same.

2 2. WMMHC admits that it is a Montana Non-Profit corporation with its principal
3 business office in Missoula, Montana. WMMHC further admits that it provides services to
4 people in Silver Bow, Deer Lodge, Powell, and Missoula counties as well as other counties
5 in Western Montana.
6

7 3. WMMHC is without sufficient knowledge to admit or deny Paragraph 3 as to
8 Community Counseling and Correctional Services, Inc.

9 4. WMMHC is not in a position to admit or deny any allegations regarding a John
10 Smith 1, where Plaintiffs apparently is aware of the identity of the individual but has not
11 legally identified the individual in the pleadings. WMMHC will amend its responses
12 regarding John Smith 1 when that individual has been legally identified.
13

14 5. Paragraph 5 is a preservation of claims against fictitious defendants and does not
15 require an answer.

16 6. Defendant WMMHC admits that the Department of Corrections is a political
17 subdivision of the State of Montana. Defendant WMMHC is without sufficient information to
18 admit or deny the remaining allegations of Paragraph 6 and therefore denies the same.
19

20 7. WMMHC denies the allegations of Paragraph 7, 8, 9, 10, 11, and 12.

21 8. Paragraph 13, is not directed at and requires no response from Defendant
22 WMMHC.

23 9. Paragraph 14 is a statement of intent to restate prior allegations to which no
24

1 response is required. To the extent a response is required; WMMHC reasserts its
2 responses to Paragraphs 1 through 13 as if fully set forth herein.

3 **10.** WMMHC denies the allegations of Paragraph 15 and 16.

4 **11.** Paragraph 17 is a statement of intent to restate prior allegations to which no
5 response is required. To the extent a response is required; WMMHC reasserts its
6 responses to Paragraphs 1 through 16 as if fully set forth herein.

7 **12.** WMMHC denies the allegations of Paragraphs 18 and 19.

8 **13.** Paragraph 20 is a statement of intent to restate prior allegations to which no
9 response is required. To the extent a response is required; WMMHC reasserts its
10 responses to Paragraphs 1 through 19 as if fully set forth herein.

11 **14.** WMMHC denies the allegations of Paragraph 21, 22, 23, and 24.

12 **15.** Paragraph 25 is a statement of intent to restate prior allegations to which no
13 response is required. To the extent a response is required; WMMHC reasserts its
14 responses to Paragraphs 1 through 24 as if fully set forth herein.

15 **16.** In answer to Paragraph 26, WMMHC admits it provides case management
16 services to certain clients. WMMHC denies it provided case management services to
17 Kristina Keys.

18 **17.** In answer to Paragraph 27, WMMHC admits that paragraph 27 paraphrases
19 WMMHC's mission statement, but denies the allegations of paragraph 27 as stated.

20 **18.** WMMHC denies the allegations of Paragraphs 28, 29, and 30.

1 **19.** Paragraph 31 is a statement of intent to restate prior allegations to which no
2 response is required. To the extent a response is required; WMMHC reasserts its
3 responses to Paragraphs 1 through 30 as if fully set forth herein.

4 **20.** Paragraphs 32 and 33 are not directed at and require no response from
5 Defendant WMMHC.
6

7 **21.** Defendant WMMHC denies the allegations of Paragraphs 34 and 35.

8 **22.** Paragraph 36 is a statement of intent to restate prior allegations to which no
9 response is required. To the extent a response is required; WMMHC reasserts its
10 responses to Paragraphs 1 through 35 as if fully set forth herein.
11

12 **23.** Paragraphs 37, 38, 39, and 40 are not directed at and require no response from
13 Defendant WMMHC.

14 **24.** Paragraph 41 is a statement of intent to restate prior allegations to which no
15 response is required. To the extent a response is required; WMMHC reasserts its
16 responses to Paragraphs 1 through 40 as if fully set forth herein.
17

18 **25.** Defendant WMMHC denies the allegations of Paragraph 42.

19 **26.** Defendant WMMHC is without sufficient information to admit or deny the
20 allegations of Paragraph 43.

21 **27.** Paragraphs 44, 45, and 46 are not directed at and require no response from
22 Defendant WMMHC

23 **28.** Defendant WMMHC denies all allegations not specifically admitted herein.
24

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim against this answering Defendant upon which relief can be granted.

2. Defendant WMMHC asserts that its care and treatment comported with the standard of care.

3. Any injuries and damages complained of by Plaintiffs were not proximately caused in whole or in part by the acts or omissions of Defendant WMMHC.

4. The injuries and damages complained of were caused in whole or in part by the acts or omissions of persons other than Defendant WMMC and, therefore, recovery is precluded or proportionately diminished, as provided by Mont. Code Ann. §§ 27-1-702 and 27-1-703.

5. Assuming, but not admitting, that Plaintiffs' allegations regarding John Smith 1 are true, then, Plaintiffs' damages and injuries were caused by the unforeseeable, intervening, superseding, intentional or criminal misconduct of John Smith 1.

6. To the extent that Plaintiffs' claimed injuries were caused or contributed to by the unforeseeable intervening conduct of others, Plaintiffs' claims may be barred or reduced accordingly.

7. To the extent that the evidence suggests Plaintiffs' claimed injuries may have been caused or contributed to by Plaintiffs' contributory negligence or failure to mitigate, Plaintiffs' claims may be barred or reduced accordingly.

1 **8.** Defendant WMMHC is entitled to contribution from any party, non-party or settled
2 party whose negligence may have contributed as a proximate cause to the injury
3 complained of in the Complaint, under the provisions of the Montana Code Annotated § 27-
4 1-703.

5
6 **9.** The alleged incidents, and any resulting injuries or damages sustained or
7 suffered by Plaintiffs on the occasions alleged in the Complaint may have been proximately
8 caused by the acts and conduct of persons or entities other than WMMHC, and such
9 conduct was the independent, intervening cause, and therefore the sole proximate and legal
10 cause of any such injuries or damages.

11
12 **10.** The damages suffered by the Plaintiffs, if any, should be reduced by any and all
13 amounts received from any collateral source, under the provisions of the Montana Code
14 Annotated § 27-1-308.

15 **11.** Any recovery by Plaintiffs for past and future non-economic damages may not
16 exceed \$250,000.00, in accordance with the Montana Code Annotated § 25-9-411.

17
18 **12.** Any award of future damages in excess of \$50,000.00 may be subject to the
19 periodic payment provisions of the Montana Code Annotated § 25-9-412.

20 **13.** Defendant WMMHC adopts by reference any other affirmative defenses raised
21 by other Defendants.

22 **14.** Defendant WMMHC raised these affirmative defenses in this answer so they will
23 not be waived. Pretrial investigation may disclose that some of the defenses raised may not
24

1 apply. Prior to trial, Defendant WMMHC will dismiss any affirmative defenses which do not
2 appear to be necessary or applicable.

3 **15.** Defendant WMMHC alleges that it has not completed discovery in this case and
4 reserves the right to amend this answer and to remove, and/or add additional, affirmative
5 defenses once discovery is completed.
6

7 **RELIEF SOUGHT**

8 WHEREFORE, Defendant WMMHC requests the Court to grant the following relief:

- 9 **1.** Dismiss Plaintiffs' Complaint with prejudice.
10 **2.** Award the Defendant WMMHC its costs.
11 **3.** For such other relief as the Court deems proper.
12

13 **JURY DEMAND**

14 Defendant WMMHC hereby demands a trial by jury of all issues of fact raised herein.
15

16 DATED this 20th day of October, 2014.

17 WILLIAMS LAW FIRM, P.C.
18 235 E. Pine, P.O. Box 9440
19 Missoula, Montana 59807-9440
20 (406) 721-4350 Fax 721-6037
21 Attorneys for Defendants

22 By 
23 Susan Moriarity Miltko
24

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2014, a copy of the foregoing was served upon the following by Mail, Express Mail, Hand-Delivery, Fax, or Federal Express:

JAMES P. O'BRIEN, ESQ.
O'BRIEN LAW OFFICE, P.C.
500 N. HIGGINS, SUITE 200
P.O. BOX 7936
MISSOULA, MT 59807-7936
(406) 721-0660 Fax: (406) 721-0664
Attorney for Plaintiff Keys

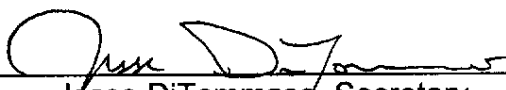
☒ U.S. MAIL
☐ EXPRESS MAIL
☐ HAND-DELIVERY
☐ FAX
☐ FEDERAL EXPRESS

DOUGLAS D. HARRIS, ESQ.
DOUGLAS HARRIS LAW OFFICES
322 WEST SPRUCE STREET
P.O. BOX 7937
MISSOULA, MT 59807-7937
(406) 549-5176 FAX: 549-5177
Attorney for Plaintiff Keys

☒ U.S. MAIL
☐ EXPRESS MAIL
☐ HAND-DELIVERY
☐ FAX
☐ FEDERAL EXPRESS

JEFFREY W. DAHOOD, ESQ.
KNIGHT & DAHOOD
113 EAST THIRD STREET
P.O. BOX 727
ANACONDA, MONTANA 59711-0727
(406) 563-3424 OR 3425 FAX: (406) 563-7519
Attorney for Plaintiff Jewell

☒ U.S. MAIL
☐ EXPRESS MAIL
☐ HAND-DELIVERY
☐ FAX
☐ FEDERAL EXPRESS



Jesse DiTommaso, Secretary